

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0066
Corporate Income Tax
For the Years 1993-1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-8.1-5-1 (b).

The taxpayer protests the imposition of tax on certain income.

II. Gross Income Tax-Sales to U.S. Government

Authority: IC 6-2.1-2-2, IC 6-2.1-3-3, 45 IAC 1-1-119 (2)(b).

The taxpayer protests the imposition of tax on certain sales to the U.S. government.

III. Adjusted Gross Income Tax- Research Expenses

Authority: IC 6-8.1-9-1 (a).

The taxpayer requests a refund of taxes paid despite certain possibly deductible research expenses.

IV. Tax Administration- Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer researches, develops, and manufactures products in the automotive, defense, and electronics and fluid technology fields. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty

for the tax period 1993-1995. The taxpayer protested a portion of the assessment and a hearing was held.

I. Gross Income Tax-Imposition of Tax

The department determined a ratio of Indiana assets and business activity to total assets and business activity everywhere. It then applied this ratio to the taxpayer's reimbursement of business expenses as reported in deductions of the federal tax return to allocate the appropriate amount subject to Indiana gross income tax. The taxpayer argued that there were no taxable reimbursements received in the Indiana operations. The taxpayer submitted its "Schedule of General & Administrative Expenses" to support this contention.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). A taxpayer generated schedule without underlying documentation is inadequate to sustain a taxpayer's burden of proof that an assessment is inappropriate.

FINDING

The taxpayer's protest is denied.

II. Gross Income Tax-Sales to U.S. Government

The department assessed gross income tax on certain sales to the U.S. government. The taxpayer protested this assessment, contending that the sales were exempt from the Indiana gross income tax since they were sales in interstate commerce. The department examined one month's sales invoices on location at the taxpayer's Ft. Wayne premises. The sales that were taxed had U.S. Government Form DD250 attached. This government form was used to record the results of a federal inspection of the items mentioned on the invoice which was performed in Indiana. The sales considered taxable also had copies of bills of lading issued by a private carrier to transport the goods to the government locations in other states. The taxpayer argues that these actions in Indiana were not enough to complete the sale within the state and subject them to the imposition of the Indiana gross income tax.

Indiana imposes a tax on "the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana." IC 6-2.1-2-2. However, not all income is subject to the tax. IC 6-2.1-3-3 provides that, "Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution."

The department has clarified the gross income tax consequences of sales to nonresidents at 45 IAC 1-1-119 (2)(b) as follows:

Sales to nonresidents where the goods are accepted by the buyer or he takes actual delivery within the state. Sales will also be taxable if the goods are

shipped out of state on bills of lading showing the seller, buyer or a third party as shipper if the goods were inspected and accepted, or when any other evidence shows that the sales were completed prior to shipment in interstate commerce.

The taxpayer submitted several bills of lading and contracts indicating that the products were shipped FOB destination. The taxpayer argued that this method of shipment delayed the transfer of title to the products until they arrived at their final destination. The cited regulation, however, indicates that inspection and acceptance of the product in Indiana determines whether or not the sale is subject to the Indiana gross income tax. In the instant case, the sales considered taxable were of products that were inspected and accepted within Indiana by the U.S. government prior to their shipment to out of state destinations. These were intrastate sales subject to the Indiana gross income tax.

DISCUSSION

The taxpayer's protest is denied.

III. Adjusted Gross Income Tax- Research Expenses

DISCUSSION

In addition to its protests, the taxpayer also claimed a refund of certain research expenses based on the Federal Research & Development Credit as determined on Internal Revenue Service audit. With its protest, the taxpayer enclosed Forms IT-20REC for tax year ending 12/31/93 and 12/31/94 reflecting a claim of refund based upon a tax credit of \$101,593 and \$131,990, respectively. The taxpayer also enclosed its IRS Notice of Proposed Adjustment with respect to the tax credit and supporting workpapers for the calculations.

The law governing claims for refund is found at IC 6-8.1-9-1 (a) as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

The taxpayer's claim for the refund of taxes paid due to a Federal Research & Development Credit was filed with the department on January 22, 2001 for the tax periods 1993 and 1994. The due dates of these returns were April 15, 1994 and 1995 respectively. That is more than three years prior to the taxpayer's claim for refund. The taxpayer contends that the three year limit does not apply in this instance due to the Agreements to Extension of Time executed by the taxpayer and the department. These extensions refer to issues of the audit, not other claims for refund the taxpayer desires to file. The Agreements specifically state that, "The time limitation

prescribed by I.C. 6-8.1-9-1 to file refund claims is not, and can not be, extended by this agreement.” That language is clear and dispositive of the issue. This claim for refund was filed too late to be considered by the department.

FINDING

The taxpayer’s claims for refund are denied.

IV. Tax Administration- Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer underreported its gross receipts despite the easily accessible department’s instructions requiring the reporting of all gross receipts. This failure to follow department’s instructions constitutes negligence.

Finding

The taxpayer’s protest to the imposition of the penalty is denied.